

**BEFORE THE  
PHYSICIAN ASSISTANT COMMITTEE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation )  
Against: )

JILL BERTOLDO, P.A. )

Case No: 1E-2002-140815

Physician Assistant )  
License No. PA-15085 )

Respondent. )  
\_\_\_\_\_ )

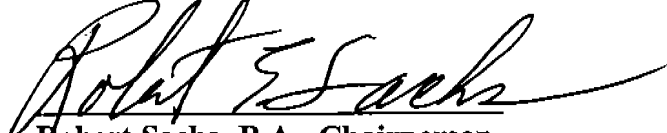
**DECISION AND ORDER**

The attached Stipulation for Surrender of License is hereby accepted and adopted as the Decision and Order by the Physician Assistant Committee, Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on October 15, 2004

ORDERED October 8, 2004

**PHYSICIAN ASSISTANT COMMITTEE**

  
Robert Sachs, P.A., Chairperson

**BILL LOCKYER, Attorney General**  
of the State of California  
**VIVIEN H. HARA**  
Supervising Deputy Attorney General  
**RUSSELL W. LEE (State Bar No. 094106)**  
Deputy Attorney General  
California Department of Justice  
1515 Clay Street, Suite 2000  
P.O. Box 70550  
Oakland, California 94612-0550  
Telephone: (510) 622-2217  
Facsimile: (510) 622-2121

Attorneys for Complainant

BEFORE THE  
PHYSICIAN ASSISTANT COMMITTEE OF  
THE MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

**JILL BERTOLDO, P.A.**  
15935 Foothill Ave.  
Morgan Hill, CA 95037  
Physician Assistant License No. PA-15085

Respondent.

Case No.: 1E-2002-140815

**STIPULATION FOR SURRENDER  
OF LICENSE**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the  
above-entitled proceedings, that the following matters are true:

1. Complainant, Richard L. Wallinder, Jr., is the Executive Officer of the  
Physician Assistant Committee of the Medical Board of California, Department of Consumer  
Affairs, State of California ("the Committee") and is represented by Bill Lockyer, Attorney  
General of the State of California, by Russell W. Lee, Deputy Attorney General.

2. Jill Bertoldo, P.A. ("respondent") is represented in this matter by attorney  
Joseph Hoffman, Weinberg, Hoffman, Casey & Ropers, whose address is 679 Bridgeway,  
Sausalito, CA 94965, (415) 289-0243. Respondent has counseled with her attorney concerning  
the effect of this Stipulation For Surrender of License ("Stipulation") which respondent has

1 carefully read and fully understands.

2           3.     Respondent has received and read the Accusation which is presently on  
3 file and pending in Case Number 1E-2002-140815 ("Accusation") before the Committee, a copy  
4 of which is attached as Exhibit A and incorporated herein by reference.

5           4.     Respondent understands the nature of the charges alleged in the  
6 Accusation and that, if proven at hearing, such charges and allegations would constitute cause for  
7 imposing discipline upon respondent's license issued by the Committee. Respondent and her  
8 counsel are aware of each of respondent's rights, including the right to a hearing on the charges  
9 and allegations, the right to confront and cross-examine witnesses who would testify against  
10 respondent, the right to testify and present evidence on her own behalf, as well as to the issuance  
11 of subpoenas to compel the attendance of witnesses and the production of documents, the right to  
12 contest the charges and allegations, and other rights which are accorded respondent pursuant to  
13 the California Administrative Procedure Act (Gov. Code, § 11500 et seq.) and other applicable  
14 laws, including the right to seek reconsideration, review by the superior court, and appellate  
15 review.

16           5.     In order to avoid the expense and uncertainty of a hearing, respondent  
17 freely and voluntarily waives each and every one of these rights set forth above and admits the  
18 truth of the allegations set forth in Paragraphs 2 through 29 on Pages 1 through 18 of the  
19 Accusation.

20           6.     Respondent agrees not to contest for purposes of this Stipulation that good  
21 cause exists to discipline Physician Assistant License No. PA-15085 for the following causes:  
22 gross negligence pursuant to sections 2234(b) and 3527 of the Business and Professions Code  
23 ("Code"); repeated negligent acts pursuant to sections 2234(c) and 3527 of the Code;  
24 incompetence pursuant to sections 2234(d) and 3527 of the Code; acts or omissions which are  
25 substantially related to the qualifications, functions, or duties of a physician assistant pursuant to  
26 sections 2234(e) and 3527 of the Code; violation of sections 3502.1 (c) and 3527 of the Code, in  
27 that respondent administered, provided or issued a drug order for Schedule II through Schedule V  
28 controlled substances without advance approval by a supervising physician and surgeon for the

1 particular patient; violation of sections 2242(a) and 3527 of the Code in that respondent  
2 prescribed dangerous drugs and controlled substances without a good faith prior examination and  
3 medical indication therefor; violation of sections 2239(a) and 3527 of the Code in that  
4 respondent used and prescribed to herself and administered to herself dangerous drugs and  
5 controlled substances; violation of section 810(a) of the Code in that respondent knowingly  
6 presented or caused to be presented a meritless claim for the payment of a loss under a contract  
7 of insurance, and knowingly prepared, made, or subscribed a writing, with intent to present or  
8 use the same, or to allowed it to be presented or used in support of a meritless claim; violation of  
9 section 2238 of the Code in conjunction with sections 4324 and 3527 of the Code in that  
10 respondent signed the name of another, or falsely made, altered, forged, uttered, published,  
11 passed, or attempted to pass, as genuine, a prescription for drugs and had in her possession  
12 drug(s) secured by a forged prescription; and violation of section 2238 of the Code in  
13 conjunction with section 3527 of the Code in that respondent violated Health and Safety Code  
14 sections 11152, 11153, 11154, 11156, 11157, 11170, 11171, 11173(a), 11173(b), 11174, 11180,  
15 11368, 11371 and 11371.1.

16 7. Respondent hereby surrenders Physician Assistant License No. PA-15085  
17 for the Committee's formal acceptance.

18 8. Respondent understands that by signing this Stipulation, she is enabling  
19 the Committee to issue its order accepting the surrender of her license without further process.  
20 Respondent understands and agrees that Committee staff and counsel for Complainant may  
21 communicate directly with the Committee regarding this Stipulation, without notice to or  
22 participation by respondent or her counsel. In the event that this Stipulation is rejected for any  
23 reason by the Committee, it will be of no force or effect for either party. The Committee will not  
24 be disqualified from further action in this matter by virtue of its consideration of this Stipulation.

25 9. In further consideration of this Stipulation, the respondent is hereby ordered  
26 to reimburse the Committee the amount of \$ 5000.00 for its partial investigative and prosecution  
27 costs, on or prior to the filing date of any future Petition for Reinstatement of respondent's  
28 Physician Assistant License. Said costs reimbursement shall be in the form of a cashier's check

1 or bank draft made payable to the Medical Board of California. Failure to timely reimburse the  
2 Committee's cost of investigation and prosecution as set forth shall constitute grounds for denial of  
3 the Petition for Reinstatement of License. The filing of bankruptcy by the respondent shall not  
4 relieve the respondent of her responsibility to reimburse the Committee for its investigative and  
5 prosecution costs.

6 10. Upon acceptance of the Stipulation by the Committee, respondent  
7 understands that she will no longer be permitted to practice as a physician assistant in California,  
8 and also agrees to surrender and cause to be delivered to the Committee both her license and  
9 wallet certificate before the effective date of the decision.

10 11. Respondent fully understands and agrees that if she ever files an  
11 application for relicensure or reinstatement in the State of California, the Committee shall treat it  
12 as a Petition for Reinstatement of License, the respondent must comply with all the laws,  
13 regulations and procedures for reinstatement of a revoked license in effect at the time the petition  
14 is filed, and all of the charges and allegations contained in Accusation No.1E-2002-140815 will  
15 be deemed to be true, correct and admitted by respondent when the Committee determines  
16 whether to grant or deny the petition.

17 12. All admissions and recitals contained in this Stipulation are made solely  
18 for the purpose of settlement in this proceeding and for any other proceedings in which the  
19 Committee or other professional licensing agency is involved, and shall not be admissible in any  
20 other criminal or civil proceedings.

21 13. In mitigation, respondent was cooperative during the Medical Board  
22 investigation. Respondent advises that she will work diligently at rehabilitative efforts in order  
23 to have her Physician Assistant License reinstated, and, among other things, intends to seek  
24 treatment and counseling in the Committee's Diversion Program or equivalent program, and to  
25 take additional CME units.

#### 26 ACCEPTANCE

27 I, Jill Bertoldo, P.A., have carefully read the above Stipulation and enter into it  
28 freely and voluntarily with the advice of counsel, and with full knowledge of its force and effect,

1 do hereby surrender my Physician Assistant License No. PA-15085 to the Physician Assistant  
2 Committee of the Medical Board of California, for its formal acceptance. By signing this  
3 Stipulation For Surrender of License, I recognize that upon its formal acceptance by the  
4 Committee, I will lose all rights and privileges to practice as a physician assistant in the State of  
5 California and I also will cause to be delivered to the Committee both my license and wallet  
6 certificate before the effective date of the decision.

7 DATED: 9/1/04

8  
9   
10 JILL BERTOLDO, P.A.  
11 Respondent

12 I have read the above Stipulation For Surrender of License and approve of it as to  
13 form and content. I have fully discussed the terms and conditions and other matters therein with  
14 respondent Jill Bertoldo, P.A.

15  
16 DATED: 9/1/04

17   
18 JOSEPH HOFFMAN, ESQ.  
19 Attorney for Respondent

20  
21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

**ENDORSEMENT**

The foregoing Stipulation For Surrender of License is hereby respectfully submitted for consideration of the Physician Assistant Committee, Medical Board of California, Department of Consumer Affairs.

DATED: 9-2-04

**BILL LOCKYER, Attorney General  
of the State of California**



**Russell W. Lee  
Deputy Attorney General**

**Attorneys for Complainant**

# **EXHIBIT A**

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BILL LOCKYER, Attorney General  
of the State of California  
VIVIEN H. HARA  
Supervising Deputy Attorney General  
RUSSELL W. LEE (State Bar No. 094106)  
Deputy Attorney General  
California Department of Justice  
1515 Clay Street, Suite 2000  
P.O. Box 70550  
Oakland, California 94612-0550  
Telephone: (510) 622-2217  
Facsimile: (510) 622-2121

Attorneys for Complainant

BEFORE THE  
PHYSICIAN ASSISTANT COMMITTEE OF  
THE MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

Case No.: 1E-2002-140815

In the Matter of the Accusation Against:

**JILL BERTOLDO, P.A.**  
815 Breeze Place  
Redwood City, CA 94062  
Physician Assistant License No. PA-15085

**ACCUSATION**

Respondent.

The Complainant alleges:

**PARTIES**

1. Complainant, Richard L. Wallinder, Jr., is the Executive Officer of the Physician Assistant Committee of the Medical Board of California, Department of Consumer Affairs, State of California (hereinafter "the Committee") and brings this Accusation solely in his official capacity.

2. On or about January 5, 2000, Physician Assistant License No. PA-15085 was issued by the Committee to Jill Bertoldo (hereinafter "respondent" or "Bertoldo"). Respondent's license, if not renewed, will expire on July 31, 2005.

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## JURISDICTION

3. Section 3504 of the Business and Professions Code (hereinafter referred to as "the Code") provides for the existence of the Committee within the Medical Board of California (hereinafter "the Board").

4 Section 3527 of the Code provides, in pertinent part, that the Committee may order the suspension or revocation of, or the imposition of probationary conditions upon a physician assistant license after a hearing as required in Section 3528 for unprofessional conduct which includes, but is not limited to a violation of this chapter (Chapter 7.7, §3500, *et seq.* of the Business and Professions Code), a violation of the Medical Practice Act (Business and Professions Code §2000 *et seq.*) or a violation of the regulations adopted by the Committee or the Board.

5. Section 3502.1. of the Code provides, in pertinent part as follows:

(a) In addition to the services authorized in the regulations adopted by the board, and except as prohibited by Section 3502, while under the supervision of a licensed physician and surgeon or physicians and surgeons authorized by law to supervise a physician assistant, a physician assistant may administer or provide medication to a patient, or transmit orally, or in writing on a patient's record or in a drug order, an order to a person who may lawfully furnish the medication or medical device pursuant to subdivisions (c) and (d). (1) A supervising physician and surgeon who delegates authority to issue a drug order to a physician assistant may limit this authority by specifying the manner in which the physician assistant may issue delegated prescriptions. (2) Each supervising physician and surgeon who delegates the authority to issue a drug order to a physician assistant shall first prepare and adopt, or adopt, a written, practice specific, formulary and protocols that specify all criteria for the use of a particular drug or device, and any contraindications for the selection. The drugs listed shall constitute the formulary and shall include only drugs that are appropriate for use in the type of practice engaged in by the supervising physician and surgeon. When issuing a drug order, the physician assistant is acting on behalf of and as an agent for a supervising physician and surgeon.

///

1                   (b)     “Drug order” for purposes of this section means an order for medication  
2 which is dispensed to or for a patient, issued and signed by a physician assistant acting as an  
3 individual practitioner within the meaning of Section 1306.02 of Title 21 of the Code of Federal  
4 Regulations. -Notwithstanding any other provision of law, (1) a drug order issued pursuant to this  
5 section shall be treated in the same manner as a prescription or order of the supervising  
6 physician, (2) all references to “prescription” in this code and the Health and Safety Code shall  
7 include drug orders issued by physician assistants pursuant to authority granted by their  
8 supervising physicians, and (3) the signature of a physician assistant on a drug order shall be  
9 deemed to be the signature of a prescriber for purposes of this code and the Health and Safety  
10 Code.

11                   (c)     A drug order for any patient cared for by the physician assistant that is  
12 issued by the physician assistant shall either be based on the protocols described in subdivision  
13 (a) or shall be approved by the supervising physician before it is filled or carried out. (1) A  
14 physician assistant shall not administer or provide a drug or issue a drug order for a drug  
15 other than for a drug listed in the formulary without advance approval from a supervising  
16 physician and surgeon for the particular patient. At the direction and under the supervision of a  
17 physician and surgeon, a physician assistant may hand to a patient of the supervising physician  
18 and surgeon a properly labeled prescription drug prepackaged by a physician and surgeon,  
19 manufacturer as defined in the Pharmacy Law, or a pharmacist. (2) A physician assistant may  
20 not administer, provide or issue a drug order for Schedule II through Schedule V controlled  
21 substances without advance approval by a supervising physician and surgeon for the particular  
22 patient. (3) Any drug order issued by a physician assistant shall be subject to a reasonable  
23 quantitative limitation consistent with customary medical practice in the supervising physician  
24 and surgeon’s practice.

25                   (d)     A written drug order issued pursuant to subdivision (a), except a written  
26 drug order in a patient’s medical record in a health facility or medical practice, shall contain the  
27 printed name, address, and phone number of the supervising physician and surgeon, the printed  
28 or stamped name and license number of the physician assistant, and the signature of the physician

1 assistant. Further, a written drug order for a controlled substance, except a written drug order in a  
2 patient's medical record in a health facility or a medical practice, shall include the federal  
3 controlled substances registration number of the physician assistant. The requirements of this  
4 subdivision may be met through stamping or otherwise imprinting on the supervising physician  
5 and surgeon's prescription blank to show the name, license number, and if applicable, the federal  
6 controlled substances number of the physician assistant, and shall be signed by the physician  
7 assistant. When using a drug order, the physician assistant is acting on behalf of and as the agent  
8 of a supervising physician and surgeon.

9 (e) The medical record of any patient cared for by a physician assistant for  
10 whom the supervising physician and surgeon's drug order has been issued or carried out shall be  
11 reviewed and countersigned and dated by a supervising physician and surgeon within seven days.

12 (f) All physician assistants who are authorized by their supervising physicians to issue drug  
13 orders for controlled substances shall register with the United States Drug Enforcement  
14 Administration (DEA).

15 6. Section 2234 of the Code provides, in pertinent part, that the Division of  
16 Medical Quality of the Medical Board of California shall take action against any licensee who is  
17 charged with unprofessional conduct. Unprofessional conduct includes, but is not limited to, the  
18 following:

19 "(a) Violating or attempting to violate, directly, or assisting in or abetting the  
20 violation of, or conspiring to violate, any provision of this chapter.

21 (b) Gross negligence.

22 (c) Repeated negligent acts.<sup>17</sup>

23  
24 1. Effective January 1, 2003, this subdivision was amended to read:

25 "(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or  
26 omissions. An initial negligent act or omission followed by a separate and distinct departure  
from the applicable standard of care shall constitute repeated negligent acts.

27 (1) An initial negligent diagnosis followed by an act or omission medically appropriate for  
that negligent diagnosis of the patient shall constitute a single negligent act.

28 (2) When the standard of care requires a change in the diagnosis, act, or omission that  
constitutes the negligent act described in paragraph (1), including, but not limited to, a

1 (d) Incompetence.

2 (e) The commission of any act involving dishonesty or corruption which is  
3 substantially related to the qualifications, functions, or duties of a physician and  
4 surgeon.

5 (f) Any action or conduct which would have warranted the denial of a  
6 certificate.”

7 7. Section 2242(a) of the Code (Medical Practice Act) provides that the  
8 prescribing, dispensing, or furnishing of dangerous drugs as defined in section 4022 of the Code  
9 without a good faith prior examination and medical indication therefor, constitutes  
10 unprofessional conduct for a physician and surgeon, and through section 3527 of the Code, for a  
11 physician assistant.

12 8. Section 2238 of the Code provides that a violation of any federal statute or  
13 federal regulation or any of the statutes or regulations of this state regulating narcotics, dangerous  
14 drugs, or controlled substances constitutes unprofessional conduct.

15 9. Section 2239, subdivision (a) of the Code provides as follows:

16 2239. (a) The use or prescribing for or administering to himself or  
17 herself, of any controlled substance; or the use of any of the  
18 dangerous drugs specified in Section 4211, or of alcoholic  
19 beverages, to the extent, or in such a manner as to be dangerous or  
20 injurious to the licensee, or to any other person or to the public, or  
21 to the extent that such use impairs the ability of the licensee to  
22 practice medicine safely or more than one misdemeanor or any  
23 felony involving the use, consumption, or self-administration of  
24 any of the substances referred to in this section, or any combination  
25 thereof, constitutes unprofessional conduct. The record of the  
26 conviction is conclusive evidence of such unprofessional conduct.

27 10. Section 810 of the Code states:

28 “(a) It shall constitute unprofessional conduct and grounds for disciplinary action,  
including suspension or revocation of a license or certificate, for a health care  
professional to do any of the following in connection with his or her professional

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reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from  
the applicable standard of care, each departure constitutes a separate and distinct breach of the  
standard of care.”

1 activities:

2 “(1) Knowingly present or cause to be presented any false or fraudulent claim  
3 for the payment of a loss under a contract of insurance.

4 “(2) Knowingly prepare, make, or subscribe any writing, with intent to present  
5 or use the same, or to allow it to be presented or used in support of any false or fraudulent  
6 claim.

7 “(b) It shall constitute cause for revocation or suspension of a license or  
8 certificate for a health care professional to engage in any conduct prohibited under  
9 Section 1871.4 of the Insurance Code or Section 550 of the Penal Code.

10 “(c) As used in this section, health care professional means any person licensed  
11 or certified pursuant to this division, or licensed pursuant to the Osteopathic Initiative  
12 Act, or the Chiropractic Initiative Act.”

13 11. Section 4324 of the Code provides as follows:

14 (a) Every person who signs the name of another, or of a fictitious person, or  
15 falsely makes, alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any  
16 prescription for any drugs is guilty of forgery and upon conviction thereof shall be punished by  
17 imprisonment in the state prison, or by imprisonment in the county jail for not more than one  
18 year.

19 (b) Every person who has in his or her possession any drugs secured by a  
20 forged prescription shall be punished by imprisonment in the state prison, or by imprisonment in  
21 the county jail for not more than one year.

22 12. Section 1399.521 of Title 16 of the California Code of Regulations  
23 provides, in pertinent part, as follows:

24 “In addition to the grounds set forth in Section 3527, subd. (a), of the code, the  
25 committee may ... suspend, revoke, or place on probation a physician's assistant for the following  
26 causes:

27 (a) Any violation of the State Medical Practice Act which would constitute  
28 unprofessional conduct for a physician and surgeon.

1 ....  
2 (e) Performing medical tasks which exceed the scope of practice of a  
3 physician assistant as prescribed in these regulations."

4 13. The following provisions of the California Health and Safety Code  
5 (hereinafter "HS") provide, in pertinent part, as indicated:

6 A. HS 11152. No person shall write, issue, fill, compound, or  
7 dispense a prescription that does not conform to this division.

8 B. HS 11153. (a) A prescription for a controlled substance shall  
9 only be issued for a legitimate medical purpose by an individual practitioner acting in the usual  
10 course of his or her professional practice. The responsibility for the proper prescribing and  
11 dispensing of controlled substances is upon the prescribing practitioner, but a corresponding  
12 responsibility rests with the pharmacist who fills the prescription. Except as authorized by this  
13 division, the following are not legal prescriptions: (1) an order purporting to be a prescription  
14 which is issued not in the usual course of professional treatment or in legitimate and authorized  
15 research; or (2) ~~an order for~~ an addict or habitual user of controlled substances, which is issued  
16 not in the course of professional treatment or as part of an authorized methadone maintenance  
17 program, for the purpose of providing the user with controlled substances, sufficient to keep him  
18 or her comfortable by maintaining customary use. (b) Any person who knowingly violates this  
19 section shall be punished by imprisonment in the state prison or in the county jail not exceeding  
20 one year, or by a fine not exceeding twenty thousand dollars (\$20,000), or by both a fine and  
21 imprisonment.

22 C. HS 11154. (a) Except in the regular practice of his or her  
23 profession, no person shall knowingly prescribe, administer, dispense, or furnish a controlled  
24 substance to or for any person or animal which is not under his or her treatment for a pathology  
25 or condition other than addiction to a controlled substance, except as provided in this division.

26 D. HS 11156. No person shall prescribe for or administer, or  
27 dispense a controlled substance to an addict or habitual user, or to any person representing  
28 himself as such, except as permitted by this division.

1                   E.     HS 11157.     No person shall issue a prescription that is false or  
2 fictitious in any respect.

3                   F.     HS 11170.     No person shall prescribe, administer, or furnish a  
4 controlled substance for himself.

5                   G.     HS 11171.     No person shall prescribe, administer, or furnish a  
6 controlled substance except under the conditions and in the manner provided by this division.

7                   H.     HS 11173.     (a) No person shall obtain or attempt to obtain  
8 controlled substances, or procure or attempt to procure the administration of or prescription for  
9 controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the  
10 concealment of a material fact. (b) No person shall make a false statement in any prescription,  
11 order, report, or record, required by this division.

12                  I.     HS 11174.     No person shall, in connection with the prescribing,  
13 furnishing, administering, or dispensing of a controlled substance, give a false name or false  
14 address.

15                  ~~J.~~     HS 11180.     No person shall obtain or possess a controlled  
16 substance obtained by a prescription that does not comply with this division.

17                  K.     HS 11368.     Every person who forges or alters a prescription or  
18 who issues or utters an altered prescription, or who issues or utters a prescription bearing a  
19 forged or fictitious signature for any narcotic drug, or who obtains any narcotic drug by any  
20 forged, fictitious, or altered prescription, or who has in possession any narcotic drug secured by  
21 such forged, fictitious, or altered prescription, shall for the first offense be punished by  
22 imprisonment in the county jail for not less than six months nor more than one year, or in the  
23 state prison.

24                  L.     HS 11371     Any person who shall knowingly violate any of the  
25 provisions of Section 11153, 11154, 11155, or 11156 with respect to (1) a controlled substance  
26 specified in subdivision (b), (c), or (d) of Section 11055, or (2) a controlled substance specified  
27 in paragraph (1) of subdivision (b) of Section 11056, or (3) a controlled substance which is a  
28 narcotic drug classified in Schedule III, IV, or V, or who in any voluntary manner solicits,



1 induces, encourages or intimidates any minor with the intent that such minor shall commit  
2 any such offense, shall be punished by imprisonment in the state prison or in a county jail not  
3 exceeding one year, or by a fine not exceeding twenty thousand dollars (\$20,000), or by both  
4 such fine and imprisonment.

5 M. HS 11371.1 Any person who shall knowingly violate any of the  
6 provisions of Section 11173 or 11174 with respect to (1) a controlled substance specified in  
7 subdivision (b), (c), or (d) of Section 11055, or (2) a controlled substance specified in paragraph  
8 (1) of subdivision (b) of Section 11056, or (3) a controlled substance which is a narcotic drug  
9 classified in Schedule III, IV, or V, or who in any voluntary manner solicits, induces, encourages  
10 or intimidates any minor with the intent that such minor shall commit any such offense, shall be  
11 punished by imprisonment in the state prison, or in a county jail not exceeding one year.

#### 12 COST RECOVERY

13 14. Section 125.3 of the Code provides, in pertinent part, that in any order  
14 issued in resolution of a disciplinary proceeding before any board within the California  
15 Department of Consumer Affairs, ~~the Board~~ may request the administrative law judge to direct a  
16 licensee found to have committed a violation/violations of the licensing act to pay a sum not to  
17 exceed the reasonable costs of the investigation and enforcement of the case.

#### 18 DRUGS

19 15. The following drugs are classified as follows:

20 A. Hydrocodone Bitartrate (generic for Vicodin, Lortab and others):  
21 Hydrocodone bitartrate is produced by several drug manufacturers. Hydrocodone with APAP is  
22 known by the trade name "Tylenol #3 or #4." Hydrocodone 5 mg with acetaminophen 500 mg is  
23 known by the trade name "Vicodin" ("5/500") and hydrocodone 7.5 mg with acetaminophen 750  
24 mg is known by the trade name "Vicodin ES" ("7.5/750"), and it is known as "Vicodin HP" and  
25 "Norco" at 10 mg strength. Hydrocodone is semisynthetic narcotic analgesic, a dangerous drug  
26 as defined in section 4022 of the Code, a Schedule III controlled substance and narcotic as  
27 defined by section 11056 (e) (4) of the Health and Safety Code [not more than 15 mg  
28 dihydrocodeinone (an early pharmaceutical term currently known as hydrocodone) per dosage

unit with a nonnarcotic ingredient], and a Schedule III controlled substance as defined by section 1308.13 (e) of Title 21 of the Code of Federal Regulations. Used primarily for pain control, it has a moderately high potential for abuse. Repeated administration of hydrocodone over a course of several weeks may result in psychological and physical dependence. Hydrocodone is also contained in varying amounts in preparations sold under the brand names Vicoprofen, Vicotuss, Lortab, Lorcet and Zydane. The usual adult dosage is one tablet every four to six hours as needed for pain. The total 24 hour dose should not exceed 8 tablets of 5 mgs or 5 tablets of 7.5 mgs (40 mgs per 24 hours).

B. Cephalexin is a semisynthetic cephalosporin antibiotic and is a dangerous drug as defined in section 4022 of the Code.

C. Levoxyl is a synthetic crystalline levothyroxine sodium (L-thyroxine) and is a dangerous drug as defined in section 4022 of the Code.

#### **FACTUAL ALLEGATIONS**

16. This case was initiated based on a consumer complaint from Patrick Bitter, Jr., M.D. (hereinafter "Dr. Bitter, Jr.") regarding Jill Bertoldo, P.A., an employee he terminated from employment. Dr. Bitter, Jr. alleged that Bertoldo was calling in prescriptions for narcotics under a co-worker's name and picking them up for self use. The co-worker was not aware of the prescriptions that were being picked up and going through her insurance. It was also alleged that Bertoldo prescribed Hydrocodone to a co-worker's son for tooth pain without an examination. The prescription was called in the employee's name for insurance purposes but intended for her minor son. The complaint included notes from when Bertoldo was terminated for the fraudulent prescriptions (which she admitted), and include a note where Bertoldo's husband apparently stated she "messed up again" and asked an employee "if Jill was using?"

17. An investigation was thereafter conducted by the Medical Board on behalf of the Committee, which revealed as follows:

A. On 7/29/03, Bertoldo was interviewed by a Medical Board Investigator. Bertoldo was accompanied by her attorney, Edward Hinshaw, Esq., and with their consent the interview was recorded on audio tape. The following is a summary of the interview:

1 (1) Bertoldo attended the P.A. program in Des Moines, Iowa  
2 at the University of Osteopathic Medicine and Health Sciences from 6/97 and graduated in 6/99.  
3 Bertoldo did her one year of clinical work in the San Francisco Bay Area, CA.

4 (2) Bertoldo started employment in 9/99 with Dr. Henry Fee in  
5 San Jose which lasted about 4 months. She then was employed by a spa in Los Gatos under Dr.  
6 Stewart Melnick. From 1/00- 8/00 or 9/00, she worked part time for Dr. Catherine Grellet and  
7 Dr. Graven an ob/gyn. During her part time work she started working for Dr. Toig, ob/gyn, one  
8 day a week which became full time in 1/01 or 2/01. She was also working for Laurel Home Care  
9 for in home care of elderly patients with no supervising physician. From 11/00- 5/01, Bertoldo  
10 worked for Dr. Steven Struck. She worked part time for Dr. Marilyn Moren from 5/01-12/01.

11 (3) In 12/01, Bertoldo started working for Dr. Bitter, Jr. in a  
12 dermatology office in Los Gatos. Bertoldo called in a prescription for Hydrocodone under a co-  
13 worker's name and picked up the medication. Bertoldo claimed the Hydrocodone was intended  
14 for Bertoldo's mother-in-law. Bertoldo claimed that her mother-in-law's insurance only covered  
15 a certain amount of prescriptions and she needed ~~pain medication~~ for the hip surgery she just had.

16 (4) In 1/02 or 2/02, co-worker, T.G.<sup>2</sup> brought up that Bertoldo  
17 could call in a prescription under T.G.'s name because T.G. had good insurance. Bertoldo stated  
18 that T.G. came to her and told her that her son was having bad tooth pain and that she could not  
19 get him into the doctor right away. T.G. asked Bertoldo if she could call in a prescription for him.  
20 In 1/02 or 2/02, Bertoldo admitted that she called in a prescription for Vicodin for T.G.'s high  
21 school aged son. Bertoldo stated that T.G. told her that she could call in prescription under her  
22 name when ever she needed because T.G.'s insurance covered more than Bertoldo's. Bertoldo  
23 admitted that T.G. was not aware of every time Bertoldo called in and picked up prescriptions  
24 under T.G.'s name and insurance.

25 (5) Bertoldo stated that she would get permission from the  
26 office manager, R.L., to call in prescriptions for herself (Bertoldo) . Bertoldo stated that many of

27  
28 2. Full names of individuals identified by initials will be provided upon a proper Request  
For Discovery.

1 the prescriptions went to her mother-in-law. Bertoldo stated that she did not know it was wrong  
2 to call in prescriptions the way she was doing

3 (6) Bertoldo admitted that Dr. Bitter, Jr., was not aware of her  
4 calling in prescriptions. Bertoldo admitted to taking 5-6 Hydrocodone a day for headaches.

5 B. On 1/27/04, Dr. Bitter, Jr., T.G., J.S. and R.L. were interviewed by  
6 a Medical Board Investigator. Said interviewees were accompanied by their attorney, Edward  
7 Hinshaw, Esq., and with their consent, the interview was recorded on audio tape. The following  
8 is a summary of the interview:

9 (1) T.G. stated that her and Bertoldo had a conversation about  
10 T.G.'s son having a tooth ache and his not being covered under insurance and not being able to  
11 afford to take him to the doctor. T.G. stated that she was going to pick him up some Tylenol over  
12 the counter. Bertoldo stated that Tylenol was not going to be strong enough and that he needed an  
13 antibiotic for the abscess. Bertoldo told T.G. that she called in the prescriptions to Walgreens.  
14 T.G. picked up the prescriptions and gave her son 2-3 pills of the pain medicine which made him  
15 sick. T.G. later found out it was the strongest Vicodin; ~~T.G. wanted~~ nothing to do with the pain  
16 medication because her son was only 15 years old. The next day Bertoldo called T.G. and stated  
17 that she had a bad headache and her lower back was hurting and wanted the pain medicine back  
18 that T.G. had. T.G. gave it back to Bertoldo.

19 (2) T.G. stated that in 8/02, she had a tooth ache and Bertoldo  
20 called in a prescription for Hydrocodone, T.G. said she did not want the medication. The  
21 Walgreen's pharmacy on Almaden called T.G. and asked if it was okay if Bertoldo picked up her  
22 medication; T.G. said no and asked to speak with Bertoldo, then T.G. told Bertoldo, no thank  
23 you. Bertoldo came back with medication from another pharmacy. T.G. did not want the  
24 medications and the next day Bertoldo called T.G. and asked if she could have the medication  
25 back because she was having back pain. T.G. gave her the medication. T.G. stated she never gave  
26 Bertoldo permission to use her insurance.

27 (3) T.G. stated that in 9/02, T.G. was prescribed Hydrocodone  
28 by her own physician (not Dr. Bitter). The pharmacy said that they could not fill the prescription

1 because she had picked up a similar prescription a few days before. T.G. stated that she spoke  
2 with the pharmacy staff at the Almaden Walgreen's and they stated that T.G. had called in and  
3 stated that Bertoldo was going to pick up the medication because she was on bed rest. T.G.  
4 became very upset because T.G. had not called Walgreens and that Bertoldo had lied to pick up  
5 the medication for herself. T.G. called R.L. (office manager) at home and told her about the  
6 incident. T.G. confronted Bertoldo about the incident and she told T.G. that the medication was  
7 for her mother-in-law because she did not have insurance.

8 (4) J.S. stated that Bertoldo prescribed antibiotics for her on a  
9 few occasions.

10 (5) Dr. Bitter, Jr., was interviewed and claimed he was not  
11 aware of the pain medication that was being prescribed by Bertoldo. Dr. Bitter, Jr., was available  
12 almost daily, he worked the same hours as Bertoldo. Bertoldo never asked Dr. Bitter, Jr., for any  
13 prescriptions. Dr. Bitter never prescribed any medication for Bertoldo, except maybe Accutane.  
14 Dr. Bitter stated that he was not aware of any of the prescriptions for narcotics being called in for  
15 Bertoldo or T.G..

16 (6) R.L. was interviewed and stated that Bertoldo would  
17 prescribe antibiotics and Accutane to office staff. One weekend Bertoldo called R.L. at home and  
18 asked her to call in Vicodin, R.L. stated that she could not. R.L. stated that she could not  
19 remember Bertoldo coming to her to get approval to call in prescriptions. After the meeting (in  
20 which Bertoldo was terminated as an employee) Bertoldo was very upset and her comment was  
21 "I am just going to kill myself..." R.L. followed Bertoldo out after the meeting because she was  
22 worried about her safety. R.L. sat in the car with Bertoldo and saw pills that were Vicodin in her  
23 glove box, Bertoldo stated that they were for her mother-in-law. Bertoldo stated that she did not  
24 take Vicodin. Bertoldo stated that she had screwed up again. R.L. spoke to Bertoldo's husband,  
25 Tim, who questioned whether Jill had "screwed up" with "meds" again.

26 C. On 3/11/04, the Medical Board Investigator interviewed Catherine  
27 Grellet, M.D. who employed Bertoldo in the past. Pharmacy records showed that Bertoldo  
28 received three prescriptions for Hydrocodone and one for Vicodin prescribed by Dr. Grellet, Dr.

1 Grellet advised that she did not prescribe Bertoldo any narcotics or approve the prescription to be  
2 called in.

3 D. An audit of local area pharmacy records by the Medical Board  
4 Investigator revealed, inter alia, that the following prescriptions had been telephoned in and  
5 dispensed:

6 *Walgreens (North Capitol Ave. - San Jose)*

7 Rx Number	Drug	Date	Quantity	Patient/Prescriber
8	Lortab 10 mg.	8/29/02	30	T.G./Bitter, Jr.
9	Keflex 500 mg.	4/25/02	28	T.G./Bitter, Jr.
10	Lortab 5 mg.	4/25/02	30	T.G./Bitter, Jr.
11	Keflex 500 mg.	2/8/02	28	T.G./Bitter, Jr.
12	Vicodin ES	2/8/02	30	T.G./Bitter, Jr.

13 *Walgreens (Almaden Road - San Jose)*

14 Rx Number	Drug	Date	Quantity	Patient/Prescriber
15 0521129-01897	Levoxyl 25 mcg	2/24/02	90	Bertoldo/Bitter, Jr.
16 0722677-02957	Levoxyl 25 mcg	1/25/02	90	Bertoldo/Bitter, Jr.
17 0743828-02957	Hydrocodone/APAP	3/18/02	30	Bertoldo/Bitter, Jr.
18 0749839-02957	Hydrocodone/APAP	5/8/02	30	Bertoldo/Bitter, Jr.
19 0749839-02957	Hydrocodone/APAP	5/14/02	30	Bertoldo/Bitter, Jr.
20 0749839-02957	Hydrocodone/APAP	5/30/02	30	Bertoldo/Bitter, Jr.
21 0767156-02957	Hydrocodone/APAP	7/21/02	30	Bertoldo/Bitter, Jr.
22 0767156-02957	Hydrocodone/APAP	7/24/02	30	Bertoldo/Bitter, Jr.
23 0767156-02957	Hydrocodone/APAP	9/17/02	30	Bertoldo/Bitter, Jr.
24 0930630-04243	Hydrocodone/APAP	8/3/02	30	Bertoldo/Bitter, Jr.
25 535343-1897	Hydrocodone/APAP	7/19/02	30	Bertoldo/Bitter, Jr.
26 541743-1897	Hydrocodone/APAP	9/26/02	30	T.G./Bertoldo

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***Rite Aid Pharmacy***

Rx Number	Drug	Date	Quantity	Patient/Prescriber
93393	Hydrocodone/APAP	7/8/00	30	Bertoldo/Grellet
169268	Vicodin HP	9/20/00	30	Bertoldo/Grellet

***Walgreens (Corporate Records)***

Rx Number	Drug	Date	Quantity	Patient/Prescriber
0743828-02957	Hydrocodone/APAP	4/14/02	30	Bertoldo/Bitter, Jr.
1024587	Hydrocodone/APAP	7/8/00	60	Bertoldo/Grellet
0455794	Hydrocodone/APAP	5/5/00	60	Bertoldo/Grellet

E. In truth and in fact, respondent telephoned in said prescriptions without proper physician authorization and/or patient knowledge (in the case of T.G.), and diverted said drugs to her own self use or for use by other individuals other than T.G..

**ACTS OR OMISSIONS**

18. Respondent committed the following acts or omissions in her practice as a physician assistant:

A. Respondent telephoned in prescriptions for dangerous drugs and controlled substances using T.G.'s name as the patient, then obtained the prescription drugs and diverted the drugs to respondent's own self use or for use by other individuals other than T.G, including, but not limited to, respondent's mother-in law, and T.G's son; and/or

B. Respondent prescribed said dangerous drugs and controlled substances in T.G.'s name without examination and/or medical indication, and/or without T.G.'s knowledge and/or consent, and/or without proper authorization from respondent' supervising physician, Dr. Bitter, Jr.; and/or

C. Respondent caused to be submitted to T.G's health insurance company false and fraudulent claims for the costs of said dangerous drugs and controlled substances, without T.G.'s knowledge and/or consent; and/or

D. Respondent telephoned in prescriptions for dangerous drugs and controlled substances using respondent's own name as the patient, using the names of Dr. Bitter,

1 Jr. and/or Dr. Grellet as the prescribers, then obtained the prescription drugs and diverted the  
2 drugs to respondent's own self use, or for use by other individuals, including, but not limited to,  
3 respondent's mother-in law; and/or

4 E. Respondent telephoned in prescriptions for dangerous drugs and  
5 controlled substances using respondent's own name as the patient, without examination of  
6 respondent by Dr. Bitter, Jr. and/or Dr. Grellet, and/or without medical indication therefore,  
7 and/or without proper authorization from her supervising physicians, Dr. Bitter, Jr. and/or Dr.  
8 Grellet.

### 9 VIOLATIONS

10 19. Respondent's conduct as set forth paragraphs 16 through 18, hereinabove,  
11 constitutes general unprofessional conduct and is cause for disciplinary action pursuant to  
12 sections 2234 and 3527 of the Code.

13 20. Respondent's conduct as set forth in paragraphs 16 through 18,  
14 hereinabove, constitutes gross negligence and is cause for disciplinary action pursuant to sections  
15 2234(b) and 3527 of the Code.

16 21. Respondent's conduct as set forth in paragraphs 16 through 18,  
17 hereinabove constitutes repeated negligent acts and is cause for disciplinary action pursuant to  
18 sections 2234(c) and 3527 of the Code.

19 22. Respondent's conduct as set forth in paragraphs 16 through 18,  
20 hereinabove constitutes incompetence and is cause for disciplinary action pursuant to sections  
21 2234(d) and 3527 of the Code.

22 23. Respondent's conduct as set forth in paragraphs 16 through 18,  
23 hereinabove constitutes dishonesty or corruption which is substantially related to the  
24 qualifications, functions, or duties of a physician assistant and is cause for disciplinary action  
25 pursuant to sections 2234(e) and 3527 of the Code.

26 24. Respondent's conduct as set forth in paragraphs 16 through 18,  
27 hereinabove constitutes a violation of sections 3502.1 (c) and 3527 of the Code, in that she  
28 administered, provided or issued a drug order for Schedule II through Schedule V controlled



1 substances without advance approval by a supervising physician and surgeon for the particular  
2 patient. Therefore, cause exists for discipline pursuant to section 3527 of the Code.

3           25.     Respondent's conduct, as alleged in paragraph 16 through 18,  
4 hereinabove, constitutes a violation of sections 2242(a) and 3527 of the Code in that respondent  
5 prescribed dangerous drugs and controlled substances without a good faith prior examination and  
6 medical indication therefor. Therefore, cause exists for discipline pursuant to section 3527 of the  
7 Code.

8           26.     Respondent's conduct, as alleged in paragraph 16 through 18,  
9 hereinabove, constitutes a violation of sections 2239(a) and 3527 of the Code in that respondent  
10 used and/or prescribed to herself and/or administered to herself dangerous drugs and controlled  
11 substances. Therefore, cause exists for discipline pursuant to section 3527 of the Code.

12           27.     Respondent's conduct, as alleged in paragraph 16 through 18,  
13 hereinabove, constitutes a violation of section 810(a) of the Code in that respondent knowingly  
14 presented or caused to be presented a false or fraudulent claim for the payment of a loss under a  
15 contract of insurance, and/or knowingly prepared, made, or subscribed a writing, with intent to  
16 present or use the same, or to allowed it to be presented or used in support of a false or fraudulent  
17 claim. Therefore, cause exists for discipline pursuant to section 810(a) of the Code.

18           28.     Respondent's conduct, as alleged in paragraph 16 through 18,  
19 hereinabove, constitutes a violation of section 2238 of the Code in conjunction with sections  
20 4324 and 3527 of the Code in that respondent signed the name of another, or of a fictitious  
21 person, or falsely made, altered, forged, uttered, published, passed, or attempted to pass, as  
22 genuine, a prescription for drugs and/or had in her possession drug(s) secured by a forged  
23 prescription. Therefore, cause exists for discipline pursuant to section 3527 of the Code.

24           29.     Respondent's conduct, as alleged in paragraph 16 through 18,  
25 hereinabove, constitutes a violation of section 2238 of the Code in conjunction with sections  
26 3527 of the Code in that respondent violated Health and Safety Code section 11152 and/or 11153  
27 and/or 11154 and/or 11156 and/or 11157 and/or 11170 and/or 11171 and/or 11173(a) and/or

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1 11173(b) and/or 11174 and/or 11180 and/or 11368 and/or 11371 and/or 11371.1. Therefore,  
2 cause exists for discipline pursuant to section 3527 of the Code.

3 **PRAYER**

4 WHEREFORE, the complainant requests that a hearing be held on the matters  
5 herein alleged, and that following the hearing, the Committee issue a decision:

6 1. Revoking or suspending Physician Assistant License Number PA 15085  
7 heretofore issued to respondent Jill Bertoldo;

8 2. Ordering respondent to pay the Committee the actual and reasonable costs  
9 of the investigation and enforcement of this case;

10 3. If probation is included in any order issued herein, to order respondent to  
11 pay the costs of probation; and

12 4. Taking such other and further action as the Committee deems necessary  
13 and proper.

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15 DATED: May 25, 2004

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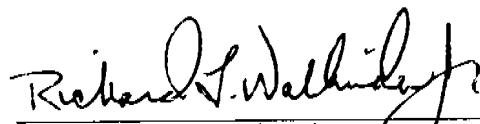
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Richard L. Wallinder, Jr.  
Executive Officer  
Physician Assistant Committee of the  
Medical Board of California  
Department of Consumer Affairs  
State of California

Complainant